HIGH COURT OF JUDICATURE CHHATTISGARH : BILASPUR

DIVISION BENCH

CORAM : **HON'BLE SHRI S.R. NAYAK, C.J.**
HON'BLE SHRI D.R. DESHMUKH, J.

WRIT PETITION NO. 308 OF 2006

PETITIONER		Fagulal Patel, S/o Shri C.S. Patel, Aged about 44 years, Ex-Postal Assistant, Trikon Chowk, Kedarpure, Ambikapur (Chhattisgarh)
	Versus	
RESPONDENTS	1.	Union of India – Through its Secretary, Ministry of Communication, Department of Posts, New Delhi.
	2.	Asstt. Director General, Ministry of Communication & IT, Department of Posts, Dak Bhawan, Sansad Bhawan, New Delhi.
	3.	Union Public Service Commission – Through its Secretary, Dhoulpur House, Shahjah Road, New Delhi.
	4.	Member (P), Postal Service Board, Department of Posts, New Delhi.
	5.	Post Master General, Raipur Region, Raipur (CG)
	6.	Superintendent, Post Offices, Raigarh (CG)

Present : Shri P. Diwakar, learned Sr. Advocate with Shri P.R. Patankar, learned counsel for the petitioner.
Shri Bhishma Kinger, learned counsel for respondents.

(ORAL ORDER)
(Passed on 13th February, 2006)

The following order of the Court was passed by

S.R. Nayak, CJ.

The petitioner while serving as postal assistant, he was served with a charge-sheet dated 06.06.1997 under Rule 14 CCS (CCA) Rules, 1965 (for short the 'Rules'), alleging that the petitioner did not pay the

pension to one Smt. Dujo Bai. The petitioner submitted his reply to the show-cause notice. The Superintendent, Post offices, the 6th respondent herein who is the disciplinary authority, not being satisfied with the reply of the petitioner, directed departmental enquiry against the petitioner by appointing an enquiry officer. The enquiry officer having conducted the departmental enquiry in terms of the Rules, returned the findings on the charges against the petitioner. The disciplinary authority on receipt of the finding recorded by the enquiry officer and appreciating the facts and circumstances of the case, thought it fit to impose the penalty of compulsory retirement on the petitioner as a disciplinary measure by his order dated 20.08.1998. The petitioner being aggrieved by the above order of the disciplinary authority, preferred departmental appeal to the Post Master General, Raipur Region, Raipur (C.G.), the 5th respondent herein. The 5th respondent dismissed the appeal by his order dated 24.11.1998. The petitioner being aggrieved by the order of the 5th respondent, preferred a revision to the Member (P), Postal Service Board, Department of Posts, New Delhi, the 4th respondent herein. The revision was also dismissed by the 4th respondent by his order dated 02.03.2000. Against that order of the 4th respondent, the petitioner sought review at the hands of President of India under Rule 29-A of the Rules. That review petition was also dismissed by order dated 04.03.2002. Thus, the petitioner having failed before all the authorities within the department, instituted O.A. No.614/2002 before the Central Administrative Tribunal, Jabalpur Bench, Jabalpur (for short "Tribunal"). The Tribunal by its order dated 29.10.2004 impugned in this writ petition has dismissed the application.

(2) We have heard Shri P. Diwakar, learned Sr. Advocate with Shri P.R.Patankar, learned counsel for the petitioner and Shri Bhishma Kinger, learned counsel who took notice for the respondents.

(3) Shri P. Diwakar, learned Sr. Counsel would contend that the Tribunal is not justified in dismissing the O.A. without appreciating the merits of the matter solely on the ground that due opportunity was given to the petitioner by the department to defend himself against the charges framed against him. It was also contended by Shri P. Diwakar that the enquiry was initiated by the 6th respondent on the basis of the complaint lodged by Smt. Dujo Bai and the petitioner had taken a specific ground in the reply to the show-cause notice that the complaint on the basis of which the enquiry was initiated does not bear the thumb impression of Smt. Dujo Bai and in that view of the matter, the 6th respondent, at the outset, ought to have referred the thumb impression obtained on the complaint to hand-writing expert for his the opinion and that this lapse on the part of the 6th respondent and the enquiry officer, would vitiate the enquiry. These are the only contentions put forth before us by the learned Senior counsel.

(4) Having heard the learned counsel for the parties, we do not find any merit in the writ petition and we cannot take any exception to the order made by the Tribunal. It is an admitted position that the 6th respondent before passing the order imposing penalty of compulsory retirement as a disciplinary measure framed appropriate charge, gave reasonable opportunity to the delinquent officer to defend himself

effectively. It is not the case of the petitioner that the finding returned by the enquiry officer to the 6th respondent is not based on any evidence. If the finding is based on substantive legal evidence and the procedure prescribed under the Rules had been adhered to by the 6th respondent and the enquiry officer in conduct of the enquiry, simply because, the petitioner had contended that the complaint, on the basis of which the enquiry was initiated, does not actually bear the thumb impression of Smt. Dujo Bai, that fact itself without anything further, would not vitiate the enquiry. The crux of the matter is that the disciplinary authority having framed a charge against the petitioner-delinquent, has discharged its onus to prove the charge by adducing evidence after following the procedure prescribed under the Rules. Since the procedure prescribed under the Rules has been adhered to by the enquiry officer as well as the 6th respondent-disciplinary authority and the findings recorded by the enquiry officer as accepted by the disciplinary authority, could not be condemned for want of legal evidence or on the ground of perversity, this Court stepping-in under Article 226 of the Constitution and interfering with the disciplinary action taken by the 6th respondent against the petitioner would not arise. As we could see from para 4 of the order of the Tribunal, what was urged before the Tribunal in support of the application was that proper opportunity of hearing was not given to the petitioner. That contention has been negatived by the Tribunal after perusal of the original records. The finding recorded by the Tribunal that before passing the order imposing the penalty of compulsory retirement, the petitioner was given fair opportunity of hearing was not seriously disputed by Shri P. Diwakar, learned Sr. counsel for the petitioner and it

could not be disputed also. Looking from any angle, this is not a fit case to entertain under Article 226 of the Constitution. The writ petition is, therefore, dismissed. No costs.

Sd/-
The Chief Justice

Sd/-
Dilip Raosaheb Deshmukh
Judge